

1 STEVEN T. JAFFE, ESQ.  
Nevada Bar No. 007035  
2 [sjaffe@lawhjc.com](mailto:sjaffe@lawhjc.com)  
DANIEL C. TETREAULT, ESQ.  
3 Nevada Bar No. 011473  
[dtetreault@lawhjc.com](mailto:dtetreault@lawhjc.com)

4 **HALL JAFFE & CLAYTON, LLP**

5 7425 Peak Drive  
LAS VEGAS, NEVADA 89128-4338  
6 (702) 316-4111  
7 FAX (702) 316-4114

8 *Attorneys for Plaintiff*  
*Douglas S. Gold*

9  
10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**

12 DOUGLAS S. GOLD, an individual,  
13 Plaintiff,

14 vs.

15 PAUL A. JEWISON, an individual; CAPO  
16 BEACH WATERCRAFT, LLC d/b/a CAPO  
17 BEACH WATERCRAFT RENTALS;  
18 BOMBARDIER RECREATIONAL  
PRODUCTS, A Canadian Corporation;  
DOES I-X; and ROE CORPORATIONS I-X,  
inclusive,

19 Defendants.  
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CASE NO. 2:18-cv-01623-APG-NJK

**MOTION TO EXTEND TIME FOR SERVICE  
OF COMPLAINT**

21 Plaintiff Douglas S. Gold, by and through his counsel of record and pursuant to Federal Rule of Civil  
22 Procedure 4, hereby moves this Court for the entry of an Order extending the time for service of the  
23 complaint on Defendant BOMBARDIER RECREATIONAL PRODUCTS for a period of 180 days for the  
24 reasons set forth more fully below.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION AND FACTUAL BACKGROUND**

3 This case arises from an out of a jet ski accident that occurred on August 28, 2016 in Dana Point,  
4 California. Plaintiff Douglas S. Gold (herein "Plaintiff" or "Gold") was operating a SeaDoo GTI  
5 watercraft, in or about the area of Dana Point, California. At or about that same date and time,  
6 Defendant Paul A. Jewison (herein "Defendant" or "Jewison") was also operating a SeaDoo GTI  
7 watercraft, in or about the area of Dana Point, California. Plaintiff alleges that Defendant operated his  
8 watercraft in an unsafe and unreasonable manner, so as to cause his watercraft to strike Plaintiff's  
9 watercraft with great force, causing Plaintiff to sustain significant and substantial damages.

10 On August 28, 2018, Plaintiff filed his Complaint in the United States Federal District Court for  
11 Nevada against Defendants PAUL A. JEWISON ("JEWISON"), CAPO BEACH WATERCRAFT, LLC  
12 d/b/a CAPO BEACH WATERCRAFT RENTALS ("CAPO BEACH"), and BOMBARDIER  
13 RECREATIONAL PRODUCTS ("BRP"). *See* Dkt. No. 1. Defendants JEWISON and CAPO BEACH  
14 were served on October 18, 2018, and October 29, 2018, respectively. *See Exhibits 1 and 2.* Upon  
15 information and belief, Defendant BRP is a Canadian corporation with its principal place of business in  
16 Valcourt, Quebec, Canada.

17 Although BRP is a Canadian corporation with its principle place of business in Quebec, Canada,  
18 it does have several offices/locations located in the United States, specifically, in Sturtevant, Wisconsin,  
19 El Paso, Texas, Plano, Texas, and Coral Springs, Florida. Plaintiff had a copy of the summons and  
20 complaint personally served upon each listed location on November 16, 2018 and November 19, 2018.  
21 As a result, Plaintiff has served BRP at each of these locations in compliance with FRCP 4 *See Exhibit*  
22 **3-6**, respectively. In addition, Plaintiff has also begun the process of effectuating service of process upon  
23 BRP in Quebec in accordance with the provisions of the Hague Convention. *See Exhibit 7*, Request for  
24 Service Abroad of Judicial and Extrajudicial Documents. However, it is Plaintiff's understanding that  
25 the process of effectuating service of process through the Hague Convention will take between 4-5  
26 months. As aa result, Plaintiff requests the time for service of process upon Defendant BRP in  
27 accordance with the Hague Convention be extended an additional 180 days.

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1    **II.    LEGAL ARGUMENT**

2       Federal Rules of Civil Procedure 4(m) states as follows:

3                    If a defendant is not served within 90 days after the complaint is filed, the  
4                    court--on motion or on its own after notice to the plaintiff--must dismiss the  
5                    action without prejudice against that defendant or order that service be made  
6                    within a specified time. **But if the plaintiff shows good cause for the  
7                    failure, the court must extend the time for service for an appropriate  
8                    period. This subdivision (m) does not apply to service in a foreign  
9                    country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under  
10                    Rule 71.1(d)(3)(A).**

11           Under FRCP 4(m), a plaintiff has two options to avoid dismissal for failure to comply with the  
12           service requirement. First, if a plaintiff establishes "good cause" for his or her failure to timely serve the  
13           defendant, then the district court must extend time for service. *See Bracey v. United States*, CIV.  
14           99-391-ST, 2000 WL 137091, at \*3 (D. Or. Feb. 3, 2000); *see also Petrucelli v. Bohringer & Ratzinger,*  
15           *GMBH*, 46 F3d 1298, 1305 (3rd Cir.1995). Second, even if plaintiff cannot establish "good cause," the  
16           court has discretion to either dismiss the action or extend time for service. *Id.*

17           The Advisory Committee Note from the 1993 Amendments to FRCP 4(m) states:

18                    The new subdivision explicitly provides that the court shall allow  
19                    additional time if there is good cause for the plaintiff's failure to effect  
20                    service in the prescribed 120 days, and authorizes the court to relieve a  
21                    plaintiff of the consequences of an application of this subdivision even if  
22                    there is no good cause shown.

23           As noted in FRCP 4(m), the 90 day requirement for service of process does not apply to service  
24           of a foreign defendant in a foreign country. Rather, service is governed by FRCP 4(f), and FRCP 4(h)(2).  
25           FRCP(f) states:

26                    Unless federal law provides otherwise, an individual--other than a minor, an incompetent person,  
27                    or a person whose waiver has been filed--may be served at a place not within any judicial district  
28                    of the United States:

- 29                    (1)    by any internationally agreed means of service that is reasonably calculated to  
30                    give notice, such as those authorized by the Hague Convention on the Service  
31                    Abroad of Judicial and Extrajudicial Documents;
- 32                    (2)    if there is no internationally agreed means, or if an international agreement allows  
33                    but does not specify other means, by a method that is reasonably calculated to give  
34                    notice:
  - 35                    (A)    as prescribed by the foreign country's law for service in that country in an action in its  
36                    courts of general jurisdiction;
  - 37                    (B)    as the foreign authority directs in response to a letter rogatory or letter of request; or

1           ©       unless prohibited by the foreign country's law, by:

2                   (I)     delivering a copy of the summons and of the complaint to the individual  
3                               personally; or

4                   (ii)    using any form of mail that the clerk addresses and sends to the individual  
5                               and that requires a signed receipt; or

6                   (3)     by other means not prohibited by international agreement, as the court orders.

7       FRCP 4(h)(2) states:

8           Serving a Corporation, Partnership, or Association. Unless federal law provides otherwise or the  
9           defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other  
10          unincorporated association that is subject to suit under a common name, must be served:

11                   (2)    at a place not within any judicial district of the United States, in any manner prescribed by  
12                               Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(I).

13       Here, Plaintiff has served BRP at four facilities based in the United States, thus ensuring that  
14       BRP has actual notice of the lawsuit. *See Exhibits 3-6.* Moreover, Plaintiff has begun the process of  
15       effectuating service through the Hague Convention, as recognized in FRCP(f)(1) as a valid means of  
16       effectuating service on a foreign corporation. Plaintiff's request is both timely and complies with FRCP  
17       4's requirements for service upon a foreign defendant. Therefore, Plaintiff requests the time for service  
18       of process be extended 180 days (or six months) in order for Plaintiff to effectuate service of process  
19       upon BRP through the provisions of the Hague Convention and FRCP 4(f).

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1 **III. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests this Court enter an Order allowing Plaintiff  
3 an additional 180 days from November 26, 2018 in which to serve the summons and complaint on  
4 Defendant BOMBARDIER RECREATIONAL PRODUCTS.

5 DATED this 26<sup>th</sup> day of November, 2018.

6 HALL JAFFE & CLAYTON, LLP

7 By /s/ Steven T. Jaffe  
8 STEVEN T. JAFFE, ESQ.  
9 Nevada Bar No. 007035  
10 DANIEL C. TETREAULT, ESQ.  
11 Nevada Bar No. 011473  
12 7425 Peak Drive  
13 Las Vegas, Nevada 89128  
14 Attorneys for Plaintiff  
15 Douglas S. Gold

16 **ORDER**

17 IT IS SO ORDERED:

18   
19 UNITED STATES MAGISTRATE JUDGE

20 November 27, 2018  
21 DATE